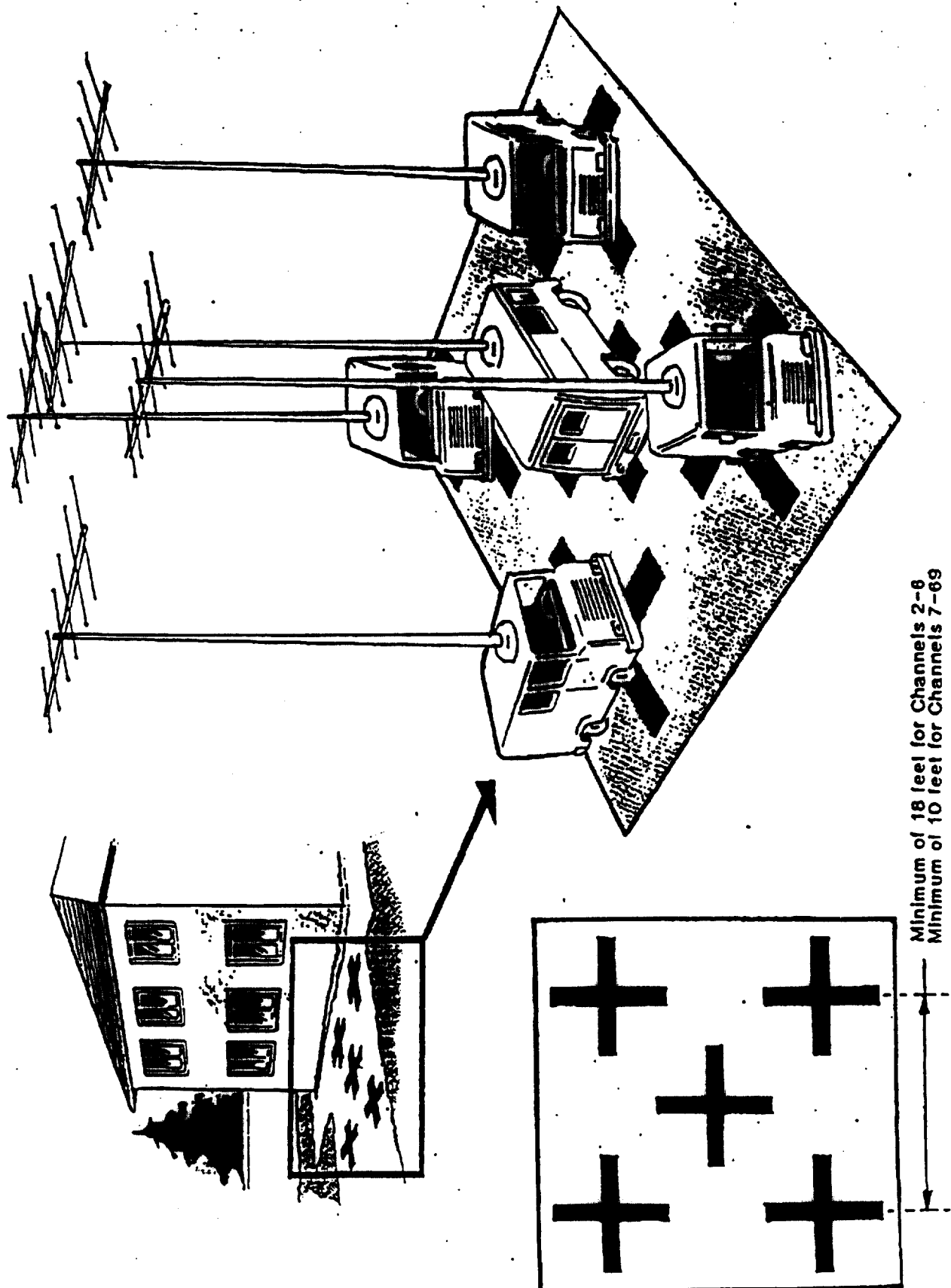


Figure 2



TELEVISION FIELD STRENGTH MEASUREMENT WORKSHEET

This worksheet was prepared to assist in the measurement of an over-the-air television station's field strength in response to the Satellite Home Viewer Act of 1994.

Station Call, Channel and City of License _____

Date of measurements _____ Local time of measurements _____

Description of location or address of household _____

Weather during measurements _____

Field Strength Meter	Receiving Antenna	Transmission Line
Manufacturer _____	Manufacturer _____	Type _____
Model Number _____	Model Number _____	Length of line _____
Serial Number _____	Gain at Measured Channel Relative to isotropic radiator (dBi)	Loss at Measured Channel Considers entire length of line (dB)

Description of present television receiving antenna at household (if known) _____

Additional comments _____

CLUSTER MEASUREMENTS

Location 1 _____ dB(uV)
 Location 2 _____ dB(uV)
 Location 3 _____ dB(uV)
 Location 4 _____ dB(uV)
 Location 5 _____ dB(uV)

PROCEDURE

- Connect the balun to the antenna located atop the measurement vehicle
- Connect the 75 ohm RG-59/U cable between the balun and the field strength meter
- Confirm that no obstacles such as power lines are overhead
- Elevate the antenna five feet above the household's roof peak; if not practical, elevate antenna 30 feet above ground level
- Orient the antenna for a maximum signal strength
- After calibrating the meter if necessary, record the field strength the location
- Collapse the elevated antenna
- Relocate the antenna so the antenna is centered at the next measurement location

Cluster Median² _____ dB(uV)
 Cable Loss³ + _____ dB
 Antenna Gain⁴ - _____ dBi
 Frequency Factor⁵ + _____ dB
 Field Strength Factor - 31.5 dB
 Corrected Field Strength⁶ _____ dBu

Field Channel	Antenna Gain (dBi)	Cable Loss (dB/100 ft)	Frequency Factor (dB)	Field Channel	Antenna Gain (dBi)	Cable Loss (dB/100 ft)	Frequency Factor (dB)
2	6.2	2.1	24.8	14-17	8.7	6.4	57.7
3	4.2	2.2	25.7	18-21	9.0	6.6	54.1
4	3.9	2.3	26.5	22-25	9.4	6.7	54.4
5	4.2	2.5	27.7	28-29	9.2	6.8	54.9
6	3.3	3.6	30.4	30-39	9.9	7.6	55.3
7	6.2	3.0	44.9	34-38	9.8	7.2	56.6
8	6.4	3.9	45.1	39-43	10.2	7.4	56.1
9	7.7	3.9	45.4	44-48	10.4	7.6	56.5
10	6.2	4.0	45.7	49-53	9.7	7.8	56.8
11	5.8	4.1	46.0	54-58	10.6	7.9	57.2
12	6.6	4.2	46.2	59-63	11.1	8.0	57.6
13	4.2	4.2	46.5	64-69	11.1	8.1	57.9

¹The units from the field strength meter should be in dB(uV), decibels relative to one microvolt. The conversion from voltage to decibels is $20 \log(\text{microvolts})$. The conversion from power (dBm) to voltage dB(uV) for a 75 ohm load is $P(\text{dBm}) + 108.6$

²Order measurements from high to low and select the middle value.

³See adjoining table if RG-59/U transmission line is employed; ratio cable loss for specific length of line.

⁴See adjoining table if Channel Master King 3646 VHF/UHF antenna is employed.

⁵See adjoining table.

⁶If the corrected field strength is below 47 dBu for channels 2-6; below 56 dBu for channels 7-13; or below 64 dBu for channels 14-69, then the measurement location is considered an unserved household.

The undersigned performed the field strength measurements in accordance with the procedures detailed in the February 27, 1996 TV Signal Measurement Methodology report.

Signature _____ Printed Name _____ Date _____

EXHIBIT B

Excerpts from the transcript and exhibits from the trial testimony of Jules Cohen,
CBS, Inc., et al. v. PrimeTime 24 Joint Venture, Civil Action No. 96-3650-CIV-NESBITT (S.D.
Fla.).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CBS INC., ET AL.,	.	CASE NO. 96-3650-CIV-NESBITT
	.	
PLAINTIFFS,	.	MIAMI, FLORIDA
	.	AUGUST 11, 1998
V.	.	9:41 A.M.
	.	
PRIMETIME 24 JOINT VENTURE,	.	
ET AL.,	.	
	.	
DEFENDANTS.	.	
.....	.	

TRANSCRIPT OF TRIAL PROCEEDINGS HAD
BEFORE THE HONORABLE LENORE C. NESBITT,
UNITED STATES DISTRICT JUDGE.

- - - - -
VOLUME 2
- - - - -

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 THE COURT: 347 THROUGH 350. ALL RIGHT.

2 (PLAINTIFFS' EXHIBIT NUMBERS 347 THROUGH 350 WERE
3 ADMITTED INTO EVIDENCE.)

4 THE COURT: MR. COHEN, DO YOU HAVE A GLASS OF
5 WATER THERE?

6 THE WITNESS: YES, I DO. THANK YOU.

7 THE COURT: ALL RIGHT.

8 MR. SCHWARTZ: THANK YOU, YOUR HONOR.

9 THE COURT: GO AHEAD, MR. SCHWARTZ.

10 MR. SCHWARTZ: THANK YOU VERY MUCH.

11 CROSS EXAMINATION

12 BY MR. SCHWARTZ:

13 Q. GOOD AFTERNOON, MR. COHEN.

14 A. GOOD AFTERNOON, MR. SCHWARTZ.

15 Q. YOU HAVE BEEN A BROADCAST TELEVISION ENGINEER FOR OVER
16 45 YEARS, CORRECT?

17 A. YES, SIR.

18 Q. AND YOU HAVE BEEN A BROADCAST TELEVISION ENGINEER FOR
19 JUST ABOUT AS LONG AS THERE HAS BEEN BROADCAST TELEVISION,
20 CORRECT?

21 A. ALMOST.

22 Q. AND IT'S FAIR TO SAY YOU WERE THERE AS A BROADCAST
23 TELEVISION ENGINEER AT THE DAWN OF THE BROADCAST TELEVISION
24 ERA.

25 A. MAJOR ERA, YES.

1 Q. SEE ANYTHING IN THIS DOCUMENT THAT SUGGESTS IT'S A
2 COMPROMISE ON ITS FACE?

3 A. NO. I'M BASING THAT ON MY PERSONAL KNOWLEDGE OF HAVING
4 PARTICIPATED IN DISCUSSIONS WITH COHEN, DU TREIL & RACKLEY,
5 AND ALSO IN SEEING CERTAIN MEMORANDA FROM YOUNG DU TREIL.

6 Q. "YOUNG DU TREIL" BEING ROBERT DU TREIL, JUNIOR, IS THAT
7 CORRECT?

8 A. YES.

9 Q. ALL RIGHT. LET'S TAKE A LOOK AT THIS SATELLITE HOME
10 VIEWER ACT T.V. SIGNAL METHODOLOGY THAT'S BEING SPONSORED BY
11 THE DU TREIL FIRM HERE IN EXHIBIT 649. DO YOU SEE THE FIRST
12 SENTENCE OF THE TEXT THAT SAYS, "THE FIELD STRENGTH TEST
13 PROCEDURE OUTLINED BELOW IS IN RESPONSE TO THE SATELLITE
14 HOME VIEWER ACT TO ENABLE THE DETERMINATION OF A, QUOTE,
15 'UNSERVED HOUSEHOLD,' " END QUOTE?

16 A. YES, I SEE THAT.

17 Q. ALL RIGHT. AND LET ME DIRECT YOUR ATTENTION TO PAGE
18 TWO OF THIS DU TREIL DOCUMENT. THE FIRST PARAGRAPH STARTS
19 BY SAYING, "THE FIELD STRENGTH MEASUREMENT PROCEDURE TO BE
20 USED IS SIMILAR TO THE, QUOTE, 'CLUSTER,' END QUOTE,
21 PROCEDURE OUTLINED IN SECTION 73.686(B)(2)(VIII) OF THE
22 F.C.C. RULES"?

23 A. I SEE THAT.

24 Q. NOW, WITH THE POSSIBLE EXCEPTION OF THE WORK THAT
25 MR. CANNALIATO DID FOR YOU IN MISSOULA, NOBODY ACTING UNDER

1 YOUR SUPERVISION, AS YOU SAY, USED AN APPROACH SIMILAR TO
2 THE CLUSTER PROCEDURE IN THIS CASE, IS THAT CORRECT?

3 A. THAT IS CORRECT. THE CLUSTER PROCEDURE IS A SECONDARY
4 PROCEDURE WHEN THE 100-FOOT RUNS ARE NOT TO BE MADE.

5 Q. AND LET'S TAKE A LOOK HERE AT -- OH, BY THE WAY, IS
6 THERE ANYTHING IN THIS DOCUMENT THAT REFLECTED A VIEW ON THE
7 PART OF THE DU TREIL FIRM WHICH YOU FIND GENERALLY RELIABLE
8 THAT THE CLUSTER PROCEDURE IS IN SOME WAY SECONDARY?

9 A. IF YOU GO TO THE F.C.C. RULES 73.686, THEN THERE IS
10 WHERE YOU FIND THAT IT'S A SECONDARY PROCEDURE.

11 Q. BUT MY QUESTION TO YOU IS DO YOU SEE ANYPLACE WHERE
12 DU TREIL IS MAKING REFERENCE TO SOMETHING AS BEING SECONDARY
13 IN THIS DOCUMENT THAT'S BEFORE YOU?

14 A. WELL, THEY DON'T ACKNOWLEDGE IT BECAUSE THEY ARE
15 PROPOSING THAT THE SIMPLER PROCEDURE BE USED.

16 Q. SO I TAKE IT THAT'S A NO?

17 A. WELL, IT'S NO BECAUSE I CAN -- WELL, I'LL LET THAT GO.
18 NO.

19 Q. THANK YOU.

20 AND YOU SEE THERE THERE IS A REFERENCE TO REQUIRED
21 TEST EQUIPMENT ON THE SAME PAGE?

22 A. YES, SIR.

23 Q. AND THE DU TREIL FIRM SAYS, "THE FOLLOWING EQUIPMENT IS
24 RECOMMENDED FOR THE MEASUREMENT PROCEDURE," CORRECT?

25 A. CORRECT.

1 Q. AND THE FIRST BULLET SAYS:

2 "A VEHICLE WITH A TELESCOPING MAST OR SOME
3 OTHER MEANS OF ELEVATING THE RECEIVING ANTENNA TO
4 BE FIVE FEET ABOVE THE HIGHEST POINT OF THE HOME'S
5 ROOFTOP LEVEL."

6 DO YOU SEE THAT?

7 A. I SEE IT.

8 Q. YOUR PEOPLE DIDN'T DO THAT IN THIS CASE, DID THEY?

9 A. NO, SIR.

10 Q. AND IT GOES ON TO SAY:

11 "IF THE ROOF HEIGHT IS BEYOND THE MAXIMUM
12 HEIGHT OF THE MAST, ELEVATION OF THE ANTENNA TO 30
13 FEET ABOVE GROUND LEVEL IS ACCEPTABLE."

14 DO YOU SEE THAT?

15 A. YES, SIR.

16 Q. SO IT'S FAIR TO SAY THAT WHAT THE DU TREIL FIRM IS
17 SAYING HERE IS ONLY IF THE ROOF HEIGHT IS HIGHER THAN THE
18 MAXIMUM HEIGHT TO WHICH IT CAN RAISE THE ANTENNA DO YOU
19 DEFAULT TO A 30-FOOT ANTENNA HEIGHT FOR MEASUREMENT
20 PURPOSES, CORRECT?

21 A. THAT'S WHAT THEY ARE SAYING.

22 Q. AND IF YOU'LL TURN THE PAGE TO PAGE THREE OF THE
23 DU TREIL RECOMMENDED SATELLITE HOME VIEWER ACT TESTING
24 METHODOLOGY, YOU WILL SEE A SECTION HEADED "PROCEDURE,"
25 CORRECT?

1 A. YES, SIR.

2 Q. AND IT SAYS:

3 "THE PURPOSE OF THE PROCEDURES SET FORTH
4 BELOW IS TO INDEPENDENTLY REPLICATE THE RECEIVING
5 ENVIRONMENT ATOP THE HOUSEHOLD ROOF."

6 DO YOU SEE THAT?

7 A. I SEE IT.

8 Q. AND IF YOU'RE GOING TO DO SATELLITE HOME VIEWER ACT
9 ELIGIBILITY TESTING, IT MAKES SENSE, DOES IT NOT, TO TRY TO
10 REPLICATE THE RECEIVING ENVIRONMENT ATOP THE HOUSEHOLD ROOF,
11 CORRECT?

12 A. IT'S IMPORTANT TO REPLICATE THE ENVIRONMENT IN THE
13 VICINITY, YES.

14 Q. WELL, I'M NOT ASKING YOU ABOUT THE VICINITY. THE
15 DU TREIL FIRM SAID THE PURPOSE OF THE PROCEDURE IS TO
16 INDEPENDENTLY REPLICATE THE RECEIVING ENVIRONMENT ATOP THE
17 HOUSEHOLD ROOF, CORRECT?

18 A. THAT IS WHAT IS SAID HERE. I AM APPLYING MY OWN
19 ENGINEERING INTERPRETATION OF THIS BECAUSE IN DOING THE
20 CLUSTER MEASUREMENT, THEY ARE NOT AT THE POSITION OF THE
21 HOUSEHOLD ANTENNA, ASSUMING THERE IS A HOUSEHOLD ANTENNA
22 THERE.

23 Q. WELL, WE WILL GET TO THAT IN JUST A SECOND, SIR. BUT
24 AS A GENERAL PROPOSITION, WOULDN'T YOU AGREE WITH THE
25 DU TREIL FIRM THAT IT'S A GOOD IDEA TO TRY TO REPLICATE THE

1 RECEIVING ENVIRONMENT ATOP THE HOUSEHOLD ROOF?

2 A. THE RECEIVING ENVIRONMENT IN THE VICINITY OF THE
3 HOUSEHOLD ROOF.

4 THE COURT: MR. COHEN, ANSWER WHAT MR. DU TREIL
5 SAID, AND THEN YOU HAVE YOUR OPINION, I KNOW, BUT THE
6 QUESTION, ISN'T THAT WHAT HE SAID.

7 THE WITNESS: YES, YOUR HONOR, THAT IS WHAT HE
8 SAID.

9 BY MR. SCHWARTZ:

10 Q. AND THE STATUTE TALKS ABOUT THE ABILITY TO RECEIVE A
11 CERTAIN SIGNAL WITH A CONVENTIONAL ROOFTOP ANTENNA, CORRECT?

12 A. YES, SIR.

13 Q. AND GIVEN THAT STATUTORY LANGUAGE, DOESN'T IT MAKE
14 SENSE TO TRY TO INDEPENDENTLY REPLICATE THE RECEIVING
15 ENVIRONMENT ATOP THE HOUSEHOLD ROOF?

16 A. TO THE EXTENT THAT'S FEASIBLE.

17 Q. THAT'S THE BEST PLACE TO TEST OR INDEPENDENTLY
18 REPLICATE, ISN'T IT?

19 A. WELL, THAT WOULD REQUIRE REPLACING THE HOUSEHOLD
20 ANTENNA WITH ANOTHER ANTENNA THAT WOULD BE SUITABLE FOR
21 MAKING THE MEASUREMENT. AND THE DU TREIL FIRM IS NOT
22 RECOMMENDING THAT THAT BE DONE --

23 Q. NO, THEY ARE -- I'M SORRY, DID I INTERRUPT?

24 A. YES, YOU DID.

25 Q. PLEASE GO AHEAD. MY APOLOGIES.

1 A. THEY ARE RECOMMENDING THAT MEASUREMENTS BE MADE IN THE
2 VICINITY OF THE HOUSEHOLD.

3 Q. NOW, I COULD BE WRONG, BUT DO YOU SEE IN THIS SECTION
4 WE'RE TALKING ABOUT ANY DISCUSSION ABOUT THE VICINITY OF THE
5 HOUSEHOLD? ISN'T THIS PARAGRAPH ON PROCEDURE?

6 A. IN THE ENTIRE CONTEXT OF THIS PROCEDURE, YES, IT IS.

7 LOOK AT THE DIAGRAM, FOR INSTANCE, WHICH IS PAGE
8 EIGHT OF THE -- FIGURE TWO, PAGE EIGHT OF THE STATEMENT.
9 AND IT SHOWS A SITUATION WHERE THE FIVE MEASUREMENTS ARE TO
10 BE MADE ALONGSIDE THE HOUSE. THE DIAGRAM DOESN'T SHOW A
11 ROOFTOP ANTENNA OF ANY KIND. WE DON'T KNOW WHERE THE
12 ANTENNA IS.

13 Q. WELL, WE'LL GET TO THE DIAGRAMS AND WHERE THE ANTENNA
14 IS IN A SECOND. I JUST WANT TO HAVE A GENERAL UNDERSTANDING
15 AS TO SORT OF A CONCEPTUAL APPROACH.

16 DU TREIL IS SAYING TRY TO REPLICATE THE RECEIVING
17 ENVIRONMENT ATOP THE HOUSEHOLD ROOF. ARE YOU HAVING TROUBLE
18 ACCEPTING THAT'S A GOOD IDEA?

19 A. NO, NO, THAT'S WHAT MR. DU TREIL SAYS. IT'S A MATTER
20 OF THE IMPLEMENTATION AND THAT DETERMINATION WHERE I GET
21 INTO TROUBLE.

22 Q. WELL, WE WILL GET INTO IMPLEMENTATION MOMENTARILY. BUT
23 AS AN APPROACH, AS A GOAL, IT'S A GOOD IDEA TO INDEPENDENTLY
24 REPLICATE THE RECEIVING ENVIRONMENT ATOP THE HOUSEHOLD ROOF,
25 ISN'T IT?

1 A. I'LL ACCEPT THAT.

2 Q. THANK YOU.

3 OKAY. NOW, DU TREIL GOES ON TO EXPLAIN IN THE
4 BALANCE OF THAT PARAGRAPH AND THE FOLLOWING PARAGRAPH HOW TO
5 GO ABOUT REPLICATING THE RECEIVING ENVIRONMENT ATOP A
6 HOUSEHOLD ROOF. FIRST OF ALL, HE SAYS, "A SET OF FIVE
7 INDIVIDUAL MEASUREMENTS SHALL BE MADE AT EACH SATELLITE
8 HOME," RIGHT?

9 A. YES, SIR.

10 Q. AND A LOCATION SHOULD BE CHOSEN AS CLOSE TO THE
11 HOUSEHOLD AS POSSIBLE, CORRECT?

12 A. YES.

13 Q. AND THE MEASUREMENT AREA, SUCH AS THE HOME'S DRIVEWAY,
14 SHOULD BE LARGE ENOUGH TO PERMIT A CLUSTER OF FIVE
15 MEASUREMENTS, CORRECT?

16 A. THAT'S RIGHT.

17 Q. AND YOU CAN'T GET MUCH CLOSER TO A HOME IN MOST CASES
18 THAN ITS DRIVEWAY, CORRECT?

19 A. THAT'S THE USUAL CASE.

20 Q. AND IF WE MIGHT JUST COMPARE WHAT YOUR PEOPLE OR THOSE
21 YOU SAY YOU SUPERVISED DID IN THIS CASE, THEY DIDN'T GO INTO
22 ANYBODY'S DRIVEWAY, CORRECT?

23 A. THAT IS CORRECT, THEY DID NOT USE DRIVEWAYS.

24 Q. AND, AGAIN, THE NEXT PARAGRAPH TALKS ABOUT RAISING A
25 RECEIVING ANTENNA AGAIN TO FIVE FEET ABOVE THE HIGHEST POINT

1 OF THE HOUSEHOLD'S ROOF, CORRECT?

2 A. YES.

3 Q. NOW, IN YOUR EXPERIENCE OVER ALL THESE DECADES AS A
4 BROADCAST TELEVISION ENGINEER, IT'S REASONABLE FOR THE
5 DU TREIL FIRM TO ASSUME THAT A ROOFTOP ANTENNA WILL BE
6 APPROXIMATELY FIVE FEET ABOVE THE HIGHEST POINT OF A
7 HOUSEHOLDS ROOF, CORRECT?

8 A. YOU'RE -- WELL, IT'S OFTEN MORE THAN THAT, BUT THAT WAS
9 THEIR ASSUMPTION.

10 Q. AND THAT'S A REASONABLE ASSUMPTION, ISN'T IT?

11 A. I THINK IT'S -- I WOULD SELECT A FIGURE LIKE EIGHT FEET
12 AS BEING MORE COMMON THAN FIVE FEET ABOVE THE ROOF, BUT
13 THAT'S A QUIBBLE.

14 Q. -I'M SORRY, I DIDN'T HEAR THE LAST PART.

15 A. I SAID THAT IS A QUIBBLE.

16 Q. AND YOU DON'T WANT TO QUIBBLE WITH DU TREIL, DO YOU?

17 A. I DON'T CHOOSE TO, NO.

18 Q. NOW, LET'S TURN TO THE FIRST DIAGRAM THAT APPEARS IN
19 HERE IN THE DU TREIL SUGGESTED TESTING METHODOLOGY INCLUDED
20 WITHIN EXHIBIT 649. AND DO YOU SEE THAT TRUCK PARKED IN THE
21 DRIVEWAY AS CLOSE TO THAT HOUSE AS YOU CAN GET?

22 A. I DO.

23 Q. AND --

24 A. IT'S AN INTERESTING DRIVEWAY -- IT DOESN'T GO ANYWHERE.

25 Q. AND DO YOU SEE THE ANTENNA THERE BEING DEPICTED AS

1 BEING RAISED TO A HEIGHT FIVE FEET ABOVE THE HIGHEST POINT
2 OF THE HOUSEHOLD'S ROOF?

3 A. YES, SIR.

4 Q. BY THE WAY, IT MAY NOT BE --

5 THE COURT: GO AHEAD.

6 BY MR. SCHWARTZ:

7 Q. I WAS GOING TO SAY IT MAY NOT BE STRICTLY WITHIN THE
8 SCOPE OF YOUR EXPERTISE, BUT THEN AGAIN, IT MAY BE, ARE YOU
9 FAMILIAR WITH THE HEIGHTS OF RESIDENTIAL DWELLINGS IN THE
10 UNITED STATES?

11 A. DO YOU MEAN IN THE SENSE THAT I HAVE SOME KIND OF A
12 STATISTICAL ANALYSIS OF THE HEIGHTS OF DWELLINGS?

13 Q. WELL, IF YOU HAVE ONE, THAT'S GREAT. BUT IF YOU DON'T,
14 MORE GENERALLY.

15 A. NO. I HAVE LIVED IN THE UNITED STATES FOR A GOOD MANY
16 YEARS AND MY OBSERVATION IS THEY RANGE WIDELY.

17 Q. AND IF THE HEIGHT OF DWELLINGS IN THE UNITED STATES
18 RANGE WILDLY (SIC), THEN HEIGHTS FIVE FEET ABOVE THOSE
19 MAXIMUM ROOF LENGTHS ARE GOING TO ALSO RANGE WILDLY, RIGHT?

20 A. THAT'S CORRECT.

21 Q. AND YOU CAN HAVE SINGLE-FAMILY HOMES THAT ARE ONE STORY
22 IN HEIGHT, CORRECT?

23 A. YES.

24 Q. OR THREE STORIES IN HEIGHT?

25 A. YES, OR MORE.

1 Q. IN EACH OF THOSE INSTANCES, THE ACTUAL ANTENNA HEIGHT,
2 ASSUMING IT'S GOING TO BE FIVE FEET OR EIGHT FEET ABOVE THE
3 MAXIMUM HEIGHT OF THE ROOF, IS GOING TO BE DIFFERENT,
4 CORRECT?

5 A. CORRECT.

6 Q. AND YOU'D AGREE WITH ME THAT THE DU TREIL FIRM IN
7 EXHIBIT 649 IS TRYING TO ACCOUNT FOR THE VARIABILITY OF ROOF
8 HEIGHTS IN THE UNITED STATES, CORRECT?

9 A. UP TO, UP TO THE POINT WHERE THE ROOF HEIGHT PLUS FIVE
10 FEET IS MORE THAN 30 FEET.

11 Q. RIGHT. THEN THEY GO DOWN TO 30 FEET, RIGHT?

12 A. CORRECT.

13 Q. SO IF I UNDERSTAND CORRECTLY, THE HIGHEST THE DU TREIL
14 FIRM IS GOING TO MEASURE AT IS 30 FEET, RIGHT?

15 A. THAT'S THE PROPOSAL.

16 Q. AND IT'S GOING TO EITHER BE 30 FEET OR LOWER?

17 A. CORRECT.

18 Q. AND IN YOUR RECOMMENDED PROCEDURE, YOU ALWAYS GO TO 30
19 FEET, CORRECT?

20 A. THAT'S RIGHT, PURSUANT TO THE F.C.C. PROCEDURE.

21 Q. NOW, WHEN YOU SAY "PURSUANT TO THE F.C.C. PROCEDURES,"
22 YOU KNOW AS WELL AS I DO, DON'T YOU, THAT THOSE F.C.C.
23 PROCEDURES WERE NOT DEVELOPED WITH THE SATELLITE HOME VIEWER
24 ACT IN MIND, RIGHT?

25 A. THERE WAS NO SATELLITE HOME VIEWING ACT AT THE TIME

1 THAT WAS ADOPTED.

2 Q. PRECISELY. AND WE DON'T HAVE TO QUARREL ABOUT THAT OR
3 QUIBBLE ABOUT IT, DO WE?

4 A. I HOPE NOT.

5 Q. AND LET'S TAKE A LOOK NOW AT THE OTHER DIAGRAM THAT YOU
6 HAD DIRECTED MY ATTENTION TO, WHICH IS, I GUESS, FIGURE 2 TO
7 THIS DU TREIL SUGGESTED TESTING METHODOLOGY. THERE THE
8 DU TREIL FIRM IS ADAPTING THE F.C.C. CLUSTER PROCEDURE TO
9 MEASUREMENTS IN THE VICINITY OF A DRIVEWAY, CORRECT?

10 A. YES, THAT'S CORRECT.

11 MR. SCHWARTZ: AND JUST SO THE COURT IS FOLLOWING,
12 WE'VE GOT THE SECOND DIAGRAM, YOUR HONOR, THAT LOOKS
13 SOMETHING LIKE THIS (INDICATING).

14 THE COURT: YES.

15 THE WITNESS: EXCEPT FOR THE HEIGHT OF THE
16 ANTENNA.

17 BY MR. SCHWARTZ:

18 Q. WELL, WHEN YOU SAY "EXCEPT FOR THE HEIGHT OF THE
19 ANTENNA," YOU'RE CLINGING TO THE F.C.C. 30-FOOT HEIGHT,
20 CORRECT?

21 A. CORRECT.

22 Q. ALL RIGHT. WE'LL TALK ABOUT THAT A LITTLE LATER.

23 BUT JUST BEFORE WE LEAVE THE POINT, RECOGNIZING AS
24 YOU DO THAT THE F.C.C. PROCEDURES WERE DEVELOPED FOR THE
25 PURPOSES UNRELATED TO THE SATELLITE HOME VIEWER ACT, THAT

- 1 30-FOOT HEIGHT, TO THE EXTENT IT'S PART OF ANY F.C.C.
2 PROTOCOL FOR TESTING, WAS NOT GEARED TO SATELLITE HOME
3 VIEWER ACT ELIGIBILITY DETERMINATIONS AT PARTICULAR HOUSES,
4 RIGHT?
- 5 A. NO, IT WAS DESIGNED TO MAKE SURE THAT THERE WAS A
6 UNIFORM PROCEDURE FOR TAKING FIELD STRENGTH MEASUREMENTS.
- 7 Q. AND THOSE UNIFORM PROCEDURES WERE DEVELOPED IN WHAT
8 DECADE?
- 9 A. UNIFORM PROCEDURES ADOPTION OF THIS SECTION OF THE RULE
10 WAS, I BELIEVE, EITHER IN THE 1960'S OR '70'S, I CAN'T
11 REMEMBER WHICH.
- 12 Q. WELL, BEFORE THE ADVENT OF SATELLITE TELEVISION
13 TECHNOLOGY, CORRECT?
- 14 A. YES, SIR.
- 15 Q. AND THE PURPOSE OF THE F.C.C. TESTING PROCEDURE THAT
16 FROM TIME TO TIME YOU'VE REFERRED TO AS STANDARDIZED, SET
17 FORTH IN 73.686, WAS TO ENABLE PEOPLE IN THE INDUSTRY TO
18 MAKE PREDICTIONS ABOUT AREA COVERAGE, CORRECT?
- 19 A. NOT PREDICTIONS; DETERMINATION OF THE FIELD STRENGTH
20 THAT PARTICULAR LOCATIONS, WHICH IN COMBINATION, COULD
21 PRODUCE PREDICTIONS AS TO AREAS.
- 22 Q. AND THE PRINCIPAL PURPOSE OF THOSE F.C.C. TESTING
23 METHODOLOGIES IS FOR AREA COVERAGE DETERMINATIONS, CORRECT?
- 24 A. THE -- THAT'S NOT ENTIRELY TRUE. WHAT THE COMMISSION
25 WAS PARTICULARLY SANCTIONING WERE MEASUREMENTS TO DETERMINE

1 MAKE AN AREA PREDICTION, CORRECT?

2 A. YOU KNOW, LET'S CALL THOSE FIELD INTENSITY CONTOURS.
3 THEY ARE NOT PROPAGATION CONTOURS, THEY ARE FIELD INTENSITY
4 CONTOURS. AND THEY ARE DETERMINED BY THE -- BY CALCULATING
5 THE FIELD INTENSITY ALONG A NUMBER OF LINES. THEN A
6 DRAFTSMAN OR A COMPUTER PROGRAM DOES SOME KIND OF AN
7 AVERAGING BETWEEN THE LINES TO CONNECT THE POINTS.

8 Q. AND WHEN ALL IS SAID AND DONE, YOU VERY OFTEN GET A
9 PAIR OF CONCENTRIC CIRCLES, CORRECT?

10 A. OR SOMETHING CLOSE TO CONCENTRIC, YES.

11 Q. AND WHAT THOSE CONCENTRIC CIRCLES DEPICT, LET'S TALK
12 ABOUT THAT FOR A SECOND. LET'S TALK ABOUT THE OUTER CIRCLE,
13 THE SO-CALLED F.C.C. PREDICTED GRADE B CONTOUR. WHAT THAT
14 DEPICTS IS AN AREA AT THE OUTER BOUNDS OF WHICH 50 PERCENT
15 OF THE TELEVISION RECEIVING HOUSEHOLDS ARE GOING TO GET A
16 SIGNAL OF A CERTAIN INTENSITY 50 PERCENT OF THE TIME,
17 CORRECT?

18 A. THIS -- NOT IN AREA. IT DEFINES A LINE WHICH FORMS THE
19 OUTER BOUNDARY OF THE LOCATION WHERE YOU WOULD EXPECT THE
20 GRADE B FIELD INTENSITY TO BE EXCEEDED LESS THAN 50 PERCENT
21 LOCATIONS 50 PERCENT OF THE TIME.

22 Q. AND SO IF YOU JUST HYPOTHETICALLY SITUATED A HOUSE
23 RIGHT ON THE GRADE B CONTOUR LINE, THE F.C.C. PREDICTED
24 GRADE B CONTOUR DRAWN, BASED ON THOSE TESTING METHODOLOGIES
25 WE JUST DISCUSSED, WOULD PREDICT THAT THAT HOUSE HAS A 50

1 PERCENT CHANCE OF GETTING A GRADE B SIGNAL 50 PERCENT OF THE
2 TIME, CORRECT?

3 A. THAT IS CORRECT.

4 Q. AND LET'S TALK ABOUT WHAT THAT MEANS FOR JUST A SECOND
5 TO A REAL WORLD TELEVISION VIEWER.

6 IF YOU LIVE IN THAT HOUSE ON THE CONTOUR, FIRSTLY,
7 YOU HAVE A ONE IN TWO CHANCE THAT YOU'RE GOING TO GET THAT
8 GRADE B SIGNAL HALF THE TIME, RIGHT?

9 A. THAT'S CORRECT.

10 Q. AND LET'S TALK ABOUT THE HOUSEHOLD THAT GETS -- IT'S
11 ONE OF THE TWO THAT GETS THE GRADE B SIGNAL, ALL RIGHT?
12 NOW, IT GETS IT 50 PERCENT OF THE TIME, RIGHT?

13 A. THE SIGNAL IS EXCEEDED 50 PERCENT OF THE TIME, YES.

14 Q. IT'S EITHER AT OR EXCEEDED 50 PERCENT OF THE TIME,
15 RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND THE OTHER 50 PERCENT OF THE TIME IT'S EITHER AT THE
18 LEVEL OR LOWER, CORRECT?

19 A. THAT IS CORRECT.

20 Q. SO THAT MEANS FOR 12 HOURS A DAY, ONE OF THOSE
21 TELEVISION VIEWING HOUSEHOLDS OUT OF TWO ON THE GRADE B
22 CONTOUR LINE DOESN'T GET A GRADE B SIGNAL, RIGHT?

23 A. THAT IS CORRECT.

24 Q. AND WHEN THE GRADE B SIGNAL VALUE WAS FIRST DEVISED BY
25 THE F.C.C., THAT WAS BACK IN THE EARLY 1950'S, RIGHT?

1 A. YES.

2 Q. AND THE PURPOSE OF IT WAS TO DETERMINE A VALUE THAT
3 WOULD TRANSLATE INTO AN ACCEPTABLE QUALITY PICTURE, CORRECT?

4 A. THAT'S RIGHT. YOU GET ACCEPTABLE QUALITY PICTURE
5 ACTUALLY 90 PERCENT OF THE TIME.

6 Q. UM-HUM. AND MR. OLSON ASKED YOU YESTERDAY, I REMEMBER,
7 IF THE COURTROOM WAS TOO HOT OR TOO COLD OR ACCEPTABLE?
8 REMEMBER THAT?

9 A. YES.

10 Q. AND THEN HE ASKED YOU IF ACCEPTABLE WAS OBJECTIVE OR
11 SUBJECTIVE, RIGHT?

12 A. YES, SIR.

13 Q. AND I THINK YOU SAID IT WAS A SUBJECTIVE, AM I CORRECT?

14 A. -YES, SIR.

15 Q. BUT THE GRADE B STANDARD WAS DRAWN BACK IN THE EARLY
16 1950'S, BASED ON THAT VERY WORD, "ACCEPTABLE," CORRECT?

17 A. YES, SIR.

18 Q. NOW, I WANT TO GO BACK TO MY HYPOTHETICAL HOUSE ON THE
19 CONTOUR WHO FOR 12 HOURS A DAY DOESN'T GET A SIGNAL OF GRADE
20 B INTENSITY. SO FOR HALF THE DAY, THAT PERSON GETS LESS
21 THAN WHAT THE F.C.C. SAID WOULD LEAD TO AN ACCEPTABLE
22 PICTURE, CORRECT?

23 A. THAT'S NOT QUITE TRUE, BECAUSE BUILT INTO THE GRADE B
24 FIELD INTENSITY IS AN ADDITIONAL TIME FACTOR THAT RAISES THE
25 TIME VARIABILITY 90 PERCENT, INSOFAR AS THE ACCEPTABLE

1 PICTURE IS CONCERNED.

2 Q. SO WHAT YOU'RE SAYING IS THERE'S A MARGIN OF ERROR
3 BUILT IN TO THE NUMBER OF MICRO VOLTS PER METER ASSOCIATED
4 WITH THE VARIOUS GRADE B LEVELS, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND THIS MAY SEEM CONFUSING TO THE UNINITIATED, BUT IF
7 I UNDERSTAND WHAT YOU'RE SAYING CORRECTLY, EVEN THOUGH THE
8 GRADE B CONTOUR MAP TELLS YOU THAT 50 PERCENT OF THE HOUSES
9 ARE GOING TO GET A GRADE B SIGNAL 50 PERCENT OF THE TIME,
10 WHAT IT REALLY MEANS IN REAL WORLD TERMS TO A TELEVISION
11 VIEWER IS THAT 50 PERCENT OF THE PEOPLE ARE GOING TO GET AN
12 ACCEPTABLE PICTURE 90 PERCENT OF THE TIME, RIGHT?

13 A. THAT IS CORRECT, IF THEY ARE USING EQUIPMENT WHICH IS
14 AS THE COMMISSION CONSIDERED IN THEIR PLANNING FACTORS.

15 Q. BACK IN 1951.

16 A. WHEN THE CONTOURS WERE -- WHEN THE LEVELS WERE
17 ESTABLISHED, YES.

18 Q. AND MORE THAN 45 YEARS AGO, CORRECT?

19 A. CORRECT, OF COURSE.

20 Q. AND IF YOU GET AN ACCEPTABLE PICTURE 90 PERCENT OF THE
21 TIME, IF YOU'RE ONE OF THE LUCKY ONES ON THE CONTOUR, THE
22 ONE OUT OF TWO THAT GETS IT, THAT MEANS THAT TEN PERCENT OF
23 THE TIME YOU DON'T GET AN ACCEPTABLE PICTURE, RIGHT?

24 A. THAT IS, YES, THAT IS.

25 Q. AND IN ANY 24 HOURS, THAT MEANS FOR APPROXIMATELY 2.4

1 HOURS A DAY, YOU CAN'T SEE A PICTURE THAT'S ACCEPTABLE,
2 RIGHT?

3 A. YOU SEE A PICTURE, BUT IT MAY NOT BE AN ACCEPTABLE
4 PICTURE.

5 Q. WELL, BY DEFINITION, MY HYPOTHESIS, IT WOULDN'T BE
6 ACCEPTABLE, RIGHT?

7 A. WE ALWAYS HAVE TO GO BACK TO WHAT I SAID BEFORE. THE
8 EQUIPMENT THAT THE HOUSE OWNER'S USING WOULD HAVE TO BE NO
9 BETTER THAN WHAT HAS BEEN ASSUMED BY THE COMMISSION IN ITS
10 PLANNING FACTORS IN DERIVING THE LEVEL FOR THE GRADE B FIELD
11 INTENSITY CONTOUR.

12 Q. THAT'S RIGHT. AND LET'S JUST KEEP THAT AS A CONSTANT
13 FACTOR SO WE UNDERSTAND EACH OTHER. 2.4 HOURS A DAY YOU
14 CAN'T WATCH T.V. IF YOU'RE ONE OF THE LUCKY ONES, RIGHT?

15 A. WELL, THAT'S AN EXTREME WAY OF PUTTING IT. YOU CAN
16 WATCH T.V., BUT IT'S NOT A PICTURE THAT YOU WOULD LIKE TO
17 WATCH ALL THE TIME.

18 Q. SO YOU HAVE AN UNACCEPTABLE PICTURE 2.4 HOURS A DAY IF
19 YOU'RE ONE OF THE LUCKY ONES ON THE CONTOUR, ONE OF THE
20 LUCKY ONE OF THE TWO, RIGHT?

21 A. YES.

22 Q. AND SO YOU HAD A SITUATION IF YOU WANT TO JUST TALK
23 ABOUT 2.4 HOURS, RIGHT SMACK IN THE MIDDLE OF PRIME TIME
24 TELEVISION VIEWING HOURS, BETWEEN SEVEN AND 10 O'CLOCK AT
25 NIGHT ON THE WEAK DAY, YOU MIGHT GET WIPED OUT FOR 2 HOURS

1 AND 24 MINUTES, RIGHT?

2 A. NOT LIKELY, BECAUSE THAT'S NOT THE TIME OF THE DAY YOU
3 WOULD EXPECT THE WEAKEST SIGNAL.

4 Q. AND WHAT TIME OF DAY WOULD YOU EXPECT THE WEAKER
5 SIGNAL?

6 A. YOU WOULD EXPECT THE WEAKER SIGNAL AROUND NOONTIME.

7 Q. ALL RIGHT. SO YOU'VE GOT NUMBER OF PEOPLE WATCHING
8 TELEVISION BETWEEN NOON AND TWO O'CLOCK, TWO HOURS AND 24
9 MINUTES OF UNACCEPTABLE PICTURE IF YOU ARE ONE OF THE LUCKY
10 ONES, CORRECT?

11 A. SITTING RIGHT AT THE EDGE OF THE GRADE B CONTOUR, YES.

12 Q. NOW, WHEN THE CONGRESS PASSED THE SATELLITE HOME VIEWER
13 ACT AS YOU WOULD INTERPRET IT, AND AS YOU HAVE IN DOING THE
14 VARIOUS WORK YOU HAVE DONE AND ALL THESE VARIOUS LITIGATIONS
15 AGAINST PRIMETIME 24, IT MADE REFERENCE TO A SIGNAL OF GRADE
16 B INTENSITY AS DEFINED BY THE FEDERAL COMMUNICATIONS
17 COMMISSION, RIGHT?

18 A. YES.

19 Q. AND YOU'VE INTERPRETED THAT FOR A LOW BAND V.H.F.
20 STATION AS BEING 47 D.B.U., RIGHT?

21 A. YES, SIR.

22 Q. THERE'S NO PLACE IN THE STATUTE THAT SAYS HOW MANY
23 HOURS A DAY IT'S NECESSARY TO GET THAT 47 D.B.U., CORRECT?

24 A. I'M SURE THAT'S CORRECT, YES.

25 MR. SCHWARTZ: YOUR HONOR, AT THIS POINT I'M GOING

1 TO MOVE THE ADMISSION OF DEFENDANTS' EXHIBIT 649, WHICH
2 CONTAINS THIS DU TREIL SATELLITE HOME VIEWER ACT T.V. SIGNAL
3 MEASUREMENT METHODOLOGY DOCUMENT THAT WE HAVE BEEN
4 DISCUSSING WITH MR. COHEN.

5 MR. OLSON: OBJECTION, YOUR HONOR, WE BELIEVE IT'S
6 HEARSAY.

7 THE COURT: OVERRULED. THAT WILL BE ADMITTED INTO
8 EVIDENCE.

9 BY MR. SCHWARTZ:

10 Q. NOW, I WANT TO CONTRAST WHAT MR. DUTREIL'S FIRM SAYS
11 SHOULD BE DONE FOR SATELLITE HOME VIEWER ACT TESTING WITH
12 WHAT THE PEOPLE YOU SUPERVISED DID IN THIS CASE.

13 DU TREIL SAYS GO IN THE DRIVEWAY AND RAISE THE
14 MAST OF THE ANTENNA TO FIVE FEET ABOVE THE ROOF HEIGHT,
15 RIGHT? WE COVERED THAT?

16 A. YES, SIR.

17 Q. ALL RIGHT. YOUR PEOPLE DID SOMETHING ELSE, CORRECT?

18 A. YES.

19 Q. WHAT THEY DID WAS THEY TRIED TO FIND THE HOUSE, FIRST
20 OF ALL, RIGHT?

21 A. THEY FOUND THE HOUSE.

22 Q. DID THEY FIND ALL THE HOUSES, BY THE WAY?

23 A. YES, THEY DID, AS A MATTER OF FACT.

24 Q. ARE YOU SURE?

25 A. I'M QUITE POSITIVE.